

# **Commonwealth of Virginia**

## **Personal Computers, Notebooks, and Servers**

### **Request For Proposal RFP No. 2003-40**

**Issued: April 4, 2003**

## REQUEST FOR PROPOSAL (RFP)

Issue Date: April 4, 2003

RFP# 2003-40

Title: Personal Computers, Notebooks, and Servers

Commodity Codes: 20600, 20400, 20453, 20454, 20455

Issuing Agency: Commonwealth of Virginia  
Department of Information Technology  
Acquisition Services Division  
110 South Seventh Street – Lobby Floor  
Richmond, VA 23219  
Attention: Doug Crenshaw  
[dcrenshaw@dit.state.va.us](mailto:dcrenshaw@dit.state.va.us)

Authorized Users: All State Agencies, Institutions of Higher Education, other public bodies and other entities authorized to use these contracts by the Code of Virginia or any other entity as mutually agreed to by both parties.

Initial Period Of Contract: Two Years From Mutually Agreed Upon Start Date with options for three (3) one year renewals.

**Sealed Proposals Will Be Received Until April 28, 2003 at 4:00pm** for Furnishing The Goods/ Services Described Herein.

All Inquiries For Information Should Be Directed, in writing, to: Doug Crenshaw before 4 PM on April 17<sup>th</sup>, 2003 via e-mail: [dcrenshaw@dit.state.va.us](mailto:dcrenshaw@dit.state.va.us) or via fax: (804) 371-5969.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1D or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**ALL PROPOSALS, WHETHER MAILED OR HAND-DELIVERED, SHOULD BE SENT DIRECTLY TO ISSUING AGENCY SHOWN ABOVE.**

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name And Address Of Firm:

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

(Signature In Ink – I certify that I am authorized to sign this proposal)

\_\_\_\_\_ Name: \_\_\_\_\_

(Please Print)

\_\_\_\_\_ Zip Code: \_\_\_\_\_ Title: \_\_\_\_\_

Dun & Bradstreet No.(D-U-N-S): \_\_\_\_\_

FEI/FIN NO. \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

\* PRE-PROPOSAL CONFERENCE: An optional pre-proposal conference will be held at 2:00 PM on April 14, 2003 at the Auditorium in Department of Information Technology's office building at 100 South Seventh Street in Richmond, VA (Reference: Paragraph H in Section I. below). Offerors are required to submit their list of attendees on the Intent to Respond Form before 4:00 PM EDT on Thursday April 10, 2003.

# NOTICE OF INTENT TO RESPOND

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## **COMMONWEALTH OF VIRGINIA** ***Personal Computers, Notebooks, and Servers***

Please return this form via fax no later than 4:00 p.m. EDT on **Thursday April 10, 2003** to Doug Crenshaw at (804) 371-5969. Please note: You should return this form **whether or not** you intend to participate.

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Switchboard Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Mark **one** of the following:

\_\_\_\_\_ We **do** plan to respond to this RFP with a proposal

\_\_\_\_\_ We **do not** plan to respond to this RFP

Reason if no: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Indicate the names of up to 3 attendees from your company who plan to attend the pre-proposal conference on Monday, April 14<sup>th</sup>, 2003 at 2:00 PM EDT:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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## I. INTRODUCTION

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### A. Statement of Purpose

THE COMMONWEALTH OF VIRGINIA spends approximately \$5 Billion per year on goods and services. There are 200+ agencies and 30+ institutions of higher education located throughout the Commonwealth that account for this spending. In addition, municipalities, other public bodies, and other public entities authorized to use contracts by the Code of Virginia, are significant buyers within the Commonwealth, and they often also purchase from attractive statewide contracts.

The Commonwealth of Virginia has engaged a consulting company, Silver Oak Solutions, that specializes in spend management, to review the specifications and pricing of their Computer Hardware purchasing programs. The Commonwealth of Virginia's agencies, institutions of higher education and other public bodies collectively referred to as the "Authorized Users", are expected to spend in excess of \$63 Million annually on Personal Computers, Notebooks, and PC-Based Servers across their agencies and institutions.

This review is part of a larger effort within the Commonwealth of Virginia called **Virginia Partners in Procurement** to better coordinate our spending in order to focus on value – the proper combination of quality, service, and price. As part of this spend management initiative, the Commonwealth of Virginia wants to leverage its considerable purchasing volume to secure the most competitive pricing structure available based on the economies of scale involved. **Please be aware that the pricing obtained through this process is expected to be more aggressive than any individual agency, institution or municipality currently may have with your company. As a result of the evaluation process, the Commonwealth may identify a subset of suppliers with which to negotiate further (and possibly request for best and final offers) prior to any award(s) which may be made. Because it is within the Commonwealth of Virginia's discretion to enter into negotiations with a limited number of suppliers, your offer should be both fully complete and aggressive.**

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish one or more contracts through competitive negotiation for the purchase of Personal Computers, Notebooks and Servers across the Commonwealth, along with associated Services and Software. Services are defined to include warranty, and maintenance services which are covered under warranty, for the products mentioned above. Software is defined to include the imbedded software/firmware and operating systems which are integral to the system's operation. (NOTE: Unix Servers are not within the scope of this RFP)

**The Commonwealth would like to invite your company to respond to this RFP with an offer which would encourage the Authorized Users to transfer all or part of their Computer Hardware purchasing volume that you are qualified to supply. Although no assurance can be given that any one offeror will obtain all of the business from the Commonwealth, Virginia intends to award its business to the offeror(s) that provide the best mix of price, quality, and service.**

## B. Overview of Silver Oak Solutions

Silver Oak Solutions is a leading provider of spend management solutions that is headquartered in Boston with additional offices in New York, San Francisco and Philadelphia. The 60+ professionals within Silver Oak have reviewed over \$5 billion in annual spending, generating annual cash savings in excess of \$1 billion. In addition to an in-depth understanding of expense management, each member of the firm has also developed specific expense category and industry expertise in multiple areas, including Personal Computers, Notebooks, and Servers.

As part of the Virginia Partners in Procurement initiative, the Commonwealth of Virginia has engaged Silver Oak to be the facilitator of this RFP process.

## C. Background

As part of the recently launched Virginia Partners in Procurement Project supported by the Governor and the Cabinet, Authorized Users of Personal Computers, Notebooks, and Servers across the Commonwealth are collaborating on their procurement of Computer Hardware via this RFP. In aggregate, Virginia's Authorized Users are expected to spend in excess of **\$63 million** dollars annually on Personal Computers, Notebooks, and Servers, with spending distributed across various sites and product mixes. **Since this number is based on past usage, and may fluctuate up or down, the Commonwealth is not in a position to guarantee minimum volume commitments.** Nevertheless, the Commonwealth's Authorized Users expect that their pricing will be significantly improved, based on the aggregate purchasing power of the Commonwealth, while also maintaining or improving their current service levels. Furthermore, Virginia has broad flexibility in fashioning the details of competition for this RFP. This may include conducting on-line reverse auctions for certain products within this RFP or setting price targets as part of follow-on negotiations in order to determine the prices that will be used to evaluate the pricing part of your proposal.

So that offerors may better understand the full scope of state-wide Computer Hardware needs that are being addressed in this RFP, further details of Commonwealth spending are provided in RFP Sections III A and III B – Products and Services Demand Profile as well as in Appendix B – Projected Computer Hardware Demand Profile.

## D. Proposal Evaluation

Please read through all sections of the RFP carefully and provide the information as requested. Details for preparing your proposal are provided in RFP Section IV. – Instructions for Materials to be Returned. Your proposal should provide your most aggressive pricing under the assumption that your company may receive a substantial portion of the Commonwealth of Virginia's business.



Proposals will be evaluated by the Selection Committee using the following criteria, the order of which is not indicative of their weight or importance:

- a. Cost of goods and services being proposed
- b. Technical Merit of Products offered
- c. Financial Stability / Experience of the Offeror
- d. Scope/Breadth of Product Offering
- e. Thoroughness of RFP Response
- f. Offeror's record of client satisfaction with similar projects as evidenced by Offeror's references, and by publicly available satisfaction surveys
- g. Participation of Small, Women-owned, and minority-owned businesses.
- h. Ability to meet and/or exceed service levels and Terms and Conditions as indicated in this RFP

### **1) Evaluation Process & Scoring**

Proposals are evaluated on the basis of the criteria enumerated in the RFP and are scored in accordance with a weighting scheme established and approved prior to the opening of any proposals.

Offerors are given the opportunity to outline any objections to the Service Requirements (in Section III) or the Terms and Conditions (in Section V) by indicating any concerns in Appendix H – Service and Quality Assurance. Respondents' inability to satisfy the service requirements and/or Terms & Conditions will be factored in as part of the Evaluation Process.

The Commonwealth is not required to furnish a statement of the reasons why a particular proposal was not the most advantageous. Should the Issuing Office determine in writing, and in its sole discretion, that only one Offeror is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that Offeror.

The proposal evaluation process involves the review by a Selection Committee of all proposals received in response to the RFP. Each Selection Committee member assigns a score to each of the selection criteria based on his/her personal understanding or interpretation of each of the proposed items. It will be decided at the beginning of the process how scores are to be assigned to each of the criteria (such as from zero to ten with five as average). The full Selection Committee will then meet to discuss the scoring. Members may change their scoring, if they desire. Members may choose to bring vendors, whom they have selected as finalists or potential candidates for contracts, in for a presentation.

Committee members may also change preliminary scoring after oral presentations and demonstrations. Final scores are then totaled and multiplied by the weights assigned to arrive at a cumulative score and numerical ranking. The Commonwealth will negotiate with selected Offerors deemed to be fully qualified and having the highest evaluation scores.

## **2) Review Committee**

A Review Committee, consisting of Commonwealth employees who do not have a direct interest in the selection, will review the selection process and major decisions such as vendor disqualification, to ensure that the selection was fair and unbiased.

## **3) Negotiation**

After the Selection Committee evaluation narrows the vendors down to a list of finalists in each category, the Commonwealth of Virginia will negotiate further with the selected Offeror(s) to establish a contract. Award of this procurement action is dependent upon the signing of a mutually acceptable contract by both parties. Should the parties fail to agree upon a contract, the Commonwealth, at its sole discretion, will cancel negotiations.

Proposals are evaluated on the basis of the criteria enumerated in the RFP and are scored in accordance with a weighting scheme established and approved prior to the opening of any proposals.

## **4) Product Breadth and Award**

The product categories included within the scope of this RFP include Personal Computers (Desktops), Notebooks, and PC-Servers and Services. While offerors are not required to propose a quote on all products contained herein, they are encouraged to do so on the widest possible array of products and options as the Commonwealth does value a wide product offering on the part of potential contractors (note that Product Breadth is indicated as one of the evaluation criteria above). If you choose to make an offer only on one or two of the three product categories, your offer will still be measured using the criteria mentioned above and compared to all other offers for those same product categories, including offers that may be larger in scope. The Commonwealth also reserves the right to award only portions of the total business to offerors; for example, a supplier may offer on desktops, laptops, and servers, but only be awarded desktops and laptops.

The Commonwealth's current Personal Computer contract is not mandatory. However, the Commonwealth has not yet determined whether or not the contract resulting from this solicitation will be mandatory. This determination will be made before the resulting contract is signed. Further, the number of contractors that will be awarded a contract as part of this process has not yet been determined. There may be one or more contractors that receive an award, and this determination will be made based on the number of contractors that is in the best interest of the Commonwealth.

**E. RFP Process, Timing and Checklist**

The timeline for this RFP process is aggressive. Proposals are due **at 4:00pm EDT on Monday April 28, 2003** – about 3.5 weeks from the date the RFP is made available, April 4, 2003.

It is anticipated that the winning offeror(s) will finalize and sign contracts within 20 days of being identified for final negotiations, subject to taking into account any required transition period(s) from existing contract(s).

**Key RFP Dates:**

<b>Activity</b>	<b>Date</b>
RFP Issue Date	April 4, 2003
Notice of Intent to Respond including list of attendees for Pre-proposal Conference	4:00pm EDT April 10, 2003
Pre-proposal Conference	2:00pm EDT on April 14, 2003
Written Questions due	4:00pm EDT on April 17, 2003
Final Written Answers posted to ASD web-site	April 21, 2003
Proposals due, including pricing and questionnaire answers, signed cover letter, and sample reports	4:00pm EDT April 28, 2003

In addition, any required Addendums will be announced on an as-needed basis.

**Proposal Submission Check List (Certain Appendices may not apply to offerors making proposals for only a portion of the contract):**

Completed	Deliverable	Description
	Intent to Respond Form	Submit Intent to Respond Form by April 10 <sup>th</sup> , 2003 including list of attendees for Pre-Proposal Conference
	Appendix A	Qualitative Supplier Information
	Appendix C	Personal Computer (Desktop) Pricing
	Appendix D	Notebook Computer Pricing
	Appendix E	PC-Server Pricing
	Appendix F	“Off-Spec” Pricing
	Appendix G	Discounts
	Appendix H	Service and Quality Assurance
	Appendix I	Ability to Meet eVA Requirements
	Appendix J	SWAM Forms
	Cover Letter	Request for Proposal Cover Letter. (after Letter from Secretary Bowen) To be signed by an officer of your company
	7 Hard Copies of RFP response, 2 CDs/diskettes	7 Hard Copies of RFP response, together with 2 copies of electronic versions of files (one on each diskette/CD, may be zipped). Please provide 1 original hard copy, marked “original”, and 6 extra hard copies
	Product Specification Sheets	Offerors are required to submit a detailed Product Sheet/Specification Sheet for each product that is offered. These product sheets should be submitted in hard copy format with the proposal. Alternatively, offerors may opt to send URL’s which provide a link to the product description information
	Sample Reports	Offerors should attach actual examples of their more sophisticated management reports as related to computer hardware, including examples of weekly, monthly, quarterly, and annual reports
	Certification Regarding Lobbying	Offerors are required to complete, sign and return Attachment “A” – Certification Regarding Lobbying

## F. RFP Definitions

Whenever the following terms are used in this document, the definitions below should be used for interpretation:

**COMMONWEALTH:** The Commonwealth of Virginia Issuing Agency, Department of Information Technology Acquisition Services Department. The issuing agency will administer the contract on behalf of all Authorized Users across Virginia.

**CONTRACT:** The written agreement covering the furnishing and delivery of material or work to be performed.

**CONTRACTOR:** Any individual, company, or corporation that has been awarded a contract by the Commonwealth following the RFP process.

**AUTHORIZED USERS:** All State Agencies, Institutions of Higher Education, other public bodies and other entities authorized to use these contracts by the Code of Virginia or any other entity as mutually agreed to by both parties.

**OFFEROR:** Any individual, company, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

**PROPOSAL:** The complete response of the offeror(s) submitted on the approved form and setting forth the offeror(s)'s prices for performing the work or supplying the material or equipment described in the specifications.

**VASCUPP:** Virginia Association of State College and University Purchasing Professionals, which represents the cooperative buying of 9 institutions of higher education: The College of William and Mary, George Mason University, James Madison University, Old Dominion University, Radford University, University of Virginia, Virginia Commonwealth University, Virginia Military Institute, and Virginia Polytechnic Institute and State University.

## G. Inquiries & Questions

We welcome your interest in working with us, and we will be pleased to answer any questions you may have in formulating your response.

Any questions with regard to any aspect of this RFP may ONLY be sent in writing via e-mail to [dcrenshaw@dit.state.va.us](mailto:dcrenshaw@dit.state.va.us), fax to Doug Crenshaw at (804) 371-5969, or mail to Doug Crenshaw at Department of Information Technology, Acquisition Services Division, 110 South Seventh Street – Lobby Floor, Richmond, VA 23219. Questions must be received on or before April 17, 2003 at 4:00PM. All questions will be answered in writing and distributed to all offerors who have indicated an intent to respond according to the procedure outlined above. Inquiries should make specific reference to the sections and page numbers from this RFP where applicable. Answers to Questions will also be posted on the ASD

website at <http://asd.state.va.us> as soon as responses are available. Please note that verbal responses will NOT be binding.

## **H. Optional Pre-Proposal Conference**

An optional pre-proposal conference will be held at **2:00 PM EDT on April 14, 2003** at the Auditorium in Department of Information Technology's office building at 100 South Seventh Street in Richmond, VA. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are **strongly** encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the RFP.

In order to register, offerors are required to indicate the anticipated attendees by listing their names (up to 3 participants per offeror) on the Intent to Respond Form and returning it to Doug Crenshaw no later than 4:00 PM EDT on April 10, 2003. Alternatively, the list of attendees can be e-mailed to Doug Crenshaw at [dcrenshaw@dit.state.va.us](mailto:dcrenshaw@dit.state.va.us) no later than 4:00 PM EDT on April 10, 2003.

## **I. Industrial Funding Agreement**

All pricing will include the I.F.A. Please refer to the Terms & Conditions for more information on the Industrial Funding Agreement.

## **J. DIT Vendor Registration**

Proposals will not result in an award if the offeror is not registered with the Department of Information of Technology. A completed registration form must be on file or received by DIT Acquisition Services Division prior to award. Check the ASD website at <http://asd.state.va.us>, or call (804) 371-5900 to request a registration form.

## **K. ASD Website**

The Commonwealth maintains an acquisition website at <http://asd.state.va.us>. Offerors are requested to check this site prior to submitting proposals, in the event the solicitation is amended or extended. ASD has established a web page specifically for this Proposal, and all further information will be posted to that website. Failure to check for amendments does not relieve the Offeror from complying with all terms of any such amendment.

## **II. RFP Terms and Conditions**

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By submitting a proposal, offerors are in agreement with the following RFP terms and conditions:

### **A. Incurred Expenses**

Neither the Commonwealth of Virginia nor the Authorized Users are responsible for expenses incurred by your company to develop and submit your Proposal. Any costs incurred for site visits for discussions or negotiations are also entirely your responsibility.

### **B. Ownership of Offer Data**

Ownership of all data, materials, and documentation originated and prepared for the Commonwealth pursuant to the RFP will belong exclusively to the Commonwealth and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror will not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

### **C. Duration and Availability of Prices**

The prices, terms and conditions that you specify in your proposal must be valid for 120 days after you submit your proposal. Should any contract be signed, pricing, pricing structure and pricing escalation/ de-escalation will be governed by the terms and conditions contained at the end of this RFP.

### **D. Other RFP Terms and Conditions**

By submitting a proposal, offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP may ultimately result in rejection of the proposal.

Furthermore, Virginia has broad flexibility in fashioning the details of competition for this RFP. This may include conducting on-line reverse auctions for certain products within this RFP or setting price targets as part of follow-on negotiations in order to determine the prices that will be used to evaluate the pricing part of your proposal.

Please refer to the end of this RFP for other Terms and Conditions that you should take into account when preparing your proposal. In Appendix H, offerors are required to indicate any Terms & Conditions and/or Service Requirements that they are unable or unwilling to meet.



### **III. PRODUCTS AND SERVICES DEMAND PROFILE**

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#### **A. Products and Services**

The purpose of this Request for Proposal is to solicit proposals from qualified firms in order to establish contracts for Authorized Users to purchase personal computers, notebooks, and PC-Servers. It includes associated hardware and operating system software that would allow the operation of the computer as a stand-alone unit, a networked unit in a local area network (LAN), a networked unit in a wide area network (WAN), or any combination of the three. This RFP is for systems, and does not include any provision for individual components, internal or external devices or peripherals to be purchased separately.

The Commonwealth is expected to purchase more than \$63 million worth of Computer Hardware, as defined to be within the scope of this RFP. This figure is based on 2002 Calendar Year spending patterns within major State Agencies, Institutions of Higher Education and some localities/municipalities.

This figure, although large, likely understates the true amount of purchases that will be made on the contracts that will be established as a result of this solicitation. The figure is understated because there are numerous groups of Commonwealth users whose spend was not captured as part of the baseline development process because of the complexity of the task and the timeline for the project. This includes localities, municipalities, and other public bodies. It is important for offerors to anticipate and incorporate the substantial volume of the resulting contract when submitting proposed pricing. Further information on the historic spend profile, as well as the forecasted spend by configuration is available in Appendix B – Projected Computer Hardware Demand Profile.

The \$63 million figure cited several times in this document is comprised of Personal Computers (Desktops), Notebooks, and PC Servers purchased by 1) State Agencies 2) Institutions of Higher Education and 3) a few Commonwealth of Virginia Municipalities, Public Bodies, and Public Entities. Spend figures for the key sub-categories of Hardware within the scope of this RFP are:

- Personal Computers (Desktops) - ~\$38 MM
- Notebooks - ~\$11 MM
- PC Servers - ~\$15 MM

#### **Aligning Contractor/Commonwealth Interests**

Two primary approaches have been adopted in this RFP to better align the interests of supplier and the Commonwealth of Virginia (COV):

- Contract Consolidation
- Definition of Standard Configurations

#### Contract Consolidation

These items may have been purchased through one or several existing contracts as well as spot purchases. There are two major sets of contracts that comprise the majority of the \$63 MM baseline:

- There are several state contracts that were established as a result of RFP 2001-30 issued in March of 2001. A majority of State Agencies and localities are purchasing off of these contracts.
- VASCUUPP has established several contracts with major PC manufacturers and a number of Institutions of Higher Education are purchasing off of these contracts.

It is the intention of the Commonwealth to combine these separate volumes into contracts for the largest logically consolidated total volume(s) possible across Virginia that meet our price and service needs.

By consolidating these contracts, the Commonwealth of Virginia expects substantial savings opportunities from greater consolidated volume, simplification of use by the Commonwealth's Authorized Users, and greater ease of administration of the contract.

#### Standard Configurations

It is the intention of the Commonwealth, through this RFP process, to establish a set of standard configurations for Personal Computers (desktops), notebooks, and PC Servers to be purchased by Authorized Users. Authorized Users that control the purchasing of these products, will then be requested to focus the overwhelming majority of their purchases within one of these standard configurations. Detailed information on the makeup of these configurations is outlined in Appendices C, D and E.

In establishing these standard configurations, the Commonwealth expects to garner aggressive pricing on the part of offerors. By focusing the purchases on a narrow set of base configurations, the Commonwealth is offering the contractor a precise set of expected specifications, with expected volume ranges that can be easily forecasted. Furthermore, contractors will be able to forecast the manufacture of specific configurations, enabling greater economies of scale and increased supply chain efficiencies.

In addition to these standard configurations, purchasers will have the opportunity to upgrade or downgrade based on a suite of options, which offerors are asked to quote pricing on in Appendices C, D and E. For example, assume there is an end-user whose needs fit within Configuration 2 (mid-range) for notebook computers, but he/she needs extra RAM. That user would purchase Configuration 2 and elect the "upgrade option" for extra RAM.

The Commonwealth reserves the right to expand or alter the lineup of standard configurations during final negotiations or during the contract development phase.

In some instances, users will require a product that is substantially different than any of the base configurations that were defined. For this reason, offerors are requested to submit a “blanket” discount for these scenarios in Appendix F – Off-Spec Pricing.

### **Maximizing Adoption of Standard Configurations**

While the Commonwealth cannot commit to concrete levels of adherence to the standard configurations, we expect that the majority of purchases will fall within the scope of these configurations, with most of the remainder addressable through a small set of selected upgrades/downgrades options applied to the standard configurations. This expectation is driven by the following initiatives:

#### Rigorous Development Process for Standard Configurations

The standard configurations were generated after a careful study of the most commonly purchased configurations for each of the product categories over the last year. This information was gathered through a comprehensive survey of the major State Agencies/Institutions of Higher Education who represent the majority of PC hardware purchases. The survey results were then studied by DIT in order to update the configurations for recent changes in technology. These proposed configurations were then shared with all State Agencies/Institutions of Higher Education that participated in the study, and the resulting feedback was incorporated into the standard configurations and another round of calibration was done with experts from DIT.

As technology changes rapidly, the Commonwealth expects to update the base configurations periodically, which can be estimated to take place every 3-6 months. **The contractors will be expected to support this effort throughout the life of the contract, and to maintain consistent price discounts, even as configurations evolve.** In the initial phase of the contract, the contractor will be expected to lead the effort to update configurations and get any updates signed off by DIT; however, DIT expects to take over ownership of this process approximately a year after of the commencement of the contract.

#### Authorization Guidelines

The Commonwealth will be working to establish a set of authorization guidelines for when and how end-users and purchasing agents will be permitted to a) purchase upgrade options and b) purchase “off-spec” products (i.e. purchases that are not made on any of the base configurations). All efforts will be made to ensure that the overwhelming majority of purchases going forward will be made off of base configurations. At this time, however, the Commonwealth cannot commit to any concrete figures on compliance to the standard configurations.

### **Faculty, Staff, Student, and State Employee Personal Use**

In the past, some Agencies, Institutions of Higher Education, and Localities/Municipalities have entered into agreements whereby provisions existed for personal purchases by state employees, faculty, staff, and students. The Commonwealth is interested in reviewing offerors' perspective on including personal use as a) part of any resulting agreement or b) part of an amendment to any resulting contract (possibly agency- or institution specific). In Appendix A, Question 37, please indicate your perspective on this subject.

## **B. Historical Demand Profile**

Information on the projected demand profile can be found in Appendix B.

While you should use the demand information provided here as a guide, please understand that it does not represent a commitment by the Commonwealth.

## **C. Pricing, Quality and Service Requirements**

### **Pricing**

In Appendices C, D, and E, the Commonwealth has outlined the base configurations for the initial phase of the contract. In the "Proposed Base Model" section, offerors are asked to propose a model that would meet or slightly exceed the stated configurations.

Virginia is requesting a discount-off-list pricing methodology. The Virginia price will be calculated by applying a discount percentage to prices listed on the vendor's website, the manufacturer's suggested retail price (MSRP), or a referenced, publicly available price list. Offerors are requested to submit a price discount for both a) State and Local Government and b) Higher Education. Pricing will contain the I.F.A. adjustment (reference Terms and Conditions # 62).

**While price adjustments will be allowed as the referenced price list changes on any selected item, or as configurations are updated to keep up with evolving technology, the percentage discount rate will not change significantly during the life of the contract. For example, if Laptop Configuration #2 is updated 6 months after the contract is signed, and the original percent discount off of list was 29%, then the discount to be applied to the list price of the newly-defined Laptop Configuration #2 should be at or close to 29%.**

The Prime Contractor, at his/her discretion, is allowed to sponsor product/Service promotions during the Contract term or any extensions thereof under the conditions outlined in the Terms and Conditions. Promotions must be available to all Authorized Users during the period of the promotion.

During the term of any resulting contract, Contractor will commit to providing Commonwealth pricing and responsive service to each of the Authorized Users.

**In addition:**

- The Contractor will invoice no service fees or additional costs to the Commonwealth during the term of this agreement (except as described in this RFP.)
- There will be no “small order”, “minimum order”, or “special order” charges or surcharges.
- There will be no return fees for inaccuracies or other errors on the part of the contractor
- Any rush delivery that occurs as a result of Contractor’s error (e.g., stock-outs, etc.) will be free of charge. No handling surcharges will be added or discounts lost for any rush or expedited orders

## Quality and Service Requirements

All of the items described in this section (pages 24 – 29) are requirements that the Commonwealth expects to be satisfied by the contractor. **If you are unable or unwilling to satisfy any of these requirements, or if you cannot meet or do not agree to meet any of the Terms and Conditions in Section V, you must indicate this in Appendix H.**

Additional specific service levels that Contractor is expected to perform at NO extra charge are summarized in the following table. For Metrics and Reporting, offerors must indicate their ability to satisfy these requirements on Questions 23 and 24 of Appendix A.

Service	Special Services Required at NO Additional Charge
Metrics	<ul style="list-style-type: none"> <li>• Response Time – The supplier will respond to all communications not later than the next business day.</li> <li>• Contractor will maintain a fill rate of 99%. (Fill rate is defined as the total number of requisition lines filled, divided by the number of lines requested over a given period. The difference, therefore, would be items on back-order).</li> <li>• Report Timeliness and Completeness (% in 5 days of due date) – 100% (Refer to “Service Requirements” below and Appendix A (Questions 17 and 18) for information on required Reports)</li> <li>• Invoice Accuracy (%) – 100%</li> <li>• Invoice Timeliness (% when orders are shipped ) – 100%</li> <li>• Overall Customer Satisfaction – A quarterly survey of end-users will be conducted by the supplier to determine the level of customer service satisfaction experienced with the supplier. Both the raw and analyzed survey results will be provided to DIT. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, Overall Satisfaction.</li> <li>• If the survey results indicate dissatisfaction with one or more of these areas please propose measures you would take to rectify them in Question 38 of Appendix A.</li> </ul>
eVA	Contractor(s) will have the capability to do business with the Commonwealth via Virginia’s eVA Internet Electronic procurement solution. Details of this capability will be determined in Appendix I.
Non-performance Remedies	If offeror is selected and under contract, but fails to meet performance requirements, then non-performance remedies will be put into effect. Offerors are requested to submit their recommendations for Non-Performance Remedies in Question 33 in Appendix A. Non-Performance Remedies will be agreed upon during negotiations and established before any contract is signed.
Reporting	<ul style="list-style-type: none"> <li>• Detailed Usage Report– Contractor will be able to supply, monthly and quarterly, Detailed Usage Reports which indicate, at a minimum, unit cost, item description, agency name, delivery location, quantity sold, total cost paid, etc.</li> </ul>

**Product Availability**

Contractors will agree that there will be no cancellation of products used without an equal and acceptable replacement approved by the designated Commonwealth of Virginia representative during the term of the agreement. Contractors will communicate manufacturer's discontinuation of any products to the contract officer in writing within five (5) business days. In such instances, Contractors will work with the contract officer(s) to identify and implement alternative options that will maintain or reduce costs associated with the replacements. Contractors will be prepared to offer detailed quarterly reports if requested by the Commonwealth, displaying removed SKUs off of contract list and suggested replacements. Contractors will offer suggested replacements of discontinued products at least 30 days prior to substitution, including replacement part number, description, list price, applicable discount, and final price.

**Ordering Methods**

The Commonwealth requires contractor(s) to accept orders via the eVA ordering system. Contractors will also have a local Virginia telephone number, or a toll free (800) number, or agree to accept collect calls. Each Authorized User is responsible for placing its own orders, which may be accomplished by written purchase order, telephone, fax or computer on-line systems.

**Payment Options**

Authorized Users pay by check, electronic funds transfer, or with the Commonwealth's authorized procurement (charge) card. Contractor(s) will accept the Commonwealth's card for single purchases under the per transaction limit for the respective Agencies/Institution of Higher Education.

**Vendors**

Using EFT via eVA will generally get you a lower transaction cost and save you money compared to payment via the purchasing card.

**eVA**

The Authorized Users expect to be able to order from Virginia's e-procurement system, called eVA. Contractors must register on eVA. Please refer to the end of this RFP for the General Terms and Conditions regarding eVA. Please state on the appropriate part of Appendix I, "Ability to meet eVA Requirements", your ability to do business with the Commonwealth via eVA.

As part of the eVA effort, all Contractors will be requested to make available descriptions of all goods, services and prices for contracted items on a catalog set up exclusively for the use of the Commonwealth. All necessary contract information including configurations, prices and discounts will be available through this catalog so as to facilitate purchases by the Commonwealth. The Contractor will list, side-by-side, the discounted prices for the Commonwealth, as well as the prices from the price list being referenced to calculate the discount. Documentation, manuals, service packs and patches should be made available for download on this site.

The catalog created by the Contractor will list **ONLY** items covered by the contract (approved by DIT in advance). The Contractor will not reference non-contract items, add-ons or features on this catalog. This does not prohibit Contractors from operation of any other catalog that may contain other, non-contact products.

**Shipping**

A packing label will be on each box and include the following items, visible on the outside of the box:

- Contract User
- Address
- Department and floor
- Contact Name
- Telephone number

A packing slip will also be included with each shipment, which will include at least the following information in no particular order:

- Line item description
- Quantity ordered
- Quantity included in shipment
- Any back order items
- Unit Price
- Number of parcels
- Purchase Order Number
- Agency name and department
- F.O.B. (destination)
- All information contained on the packing label

**Returns**

Any materials delivered in poor condition, in excess of the amount authorized by the requisition form or not included on the requisition form or purchase order may, at the discretion of the Authorized Users, be returned to the Contractor's warehouse at the Contractor's expense within 30 days. Credit for returned goods will be made immediately once contractor receives returned goods.

**Post-Order Customer Service**

The Contractor(s) should provide all of the designated Authorized Users a single, local point of contact (and a backup) to handle questions and resolve problems that arise. At least one Customer Service Representative will be available during Contractor's operating hours. All service representatives will have on-line access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, State-wide contract pricing, contracted product offerings/exclusions, contract compliance requirements, and general product information. Representatives should be available by phone, fax, or email (local or 800 # preferred).



Both Authorized Users and the Contractor(s) will commit to quarterly reviews of internal customer satisfaction and will make consistent efforts to improve customer satisfaction.

**Quality Assurance Guarantees**

The Contractor(s) is to guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The terms of this contract will supersede any language to the contrary on purchase orders, invoices or other documents provided by the contractor(s), manufacturer(s), or other sources. The Contractor(s) is to agree to repair and/or immediately replace without charge (including freight both ways) to Authorized Users any product or part thereof that proves to be defective or fails within the warranty period as specified. Please refer to the Terms and Conditions for more information on manufacturer warranty.

**Payment Terms**

Standard payment terms for Authorized Users are **net 30** days from product delivery or invoice receipt, whichever is later. Please refer to the Terms and Conditions for more information on Payment Terms. Offerors are given the opportunity to offer a Percentage Discount for faster payment in Appendix G.

**Reporting Requirements**

Authorized Users require periodic usage and quality reports. In Excel form Appendix A, please indicate and send a sample, of your current reporting capabilities (monthly, quarterly, and annually). These reports should include, but not be limited to, the following metrics: fill rates, delivery results, Virginia contract number, usage by division and location, and savings summaries.

**Intention**

It is the intent of the Commonwealth to describe a complete working configuration. Any incidental items omitted from these specifications but needed to make a complete working configuration will be provided by the Contractor and will be included in the Proposal price.

**Equipment Evaluation Period**

The Commonwealth may elect to conduct testing before the award of the Contract. All Offerors should be prepared to provide hardware and system software for such testing prior to award. Should the COV elect to test an Offeror's hardware and system software, the Offeror must provide one (1) evaluation system for each configuration offered. If the COV determines that the Offeror's hardware and/or system software do not meet the specifications as stated in the RFP, the offer will be rejected. The Offeror may reclaim all equipment submitted for evaluation. The Offeror will be liable for all costs associated with the hardware and system software submitted for evaluation.

**System Software**

The vendor, by submitting a response, warrants they have authorization to provide a legitimate license for the Operating System installed on the unit. Each delivered system will have installed the most current operating system release, unless otherwise specified by the COV Authorized User. The Contractor will, if requested, deliver all original software media

and manuals with the system. If the media is not requested, the Contractor will provide evidence of license. If the original operating system media is not delivered with the system, the Contractor must provide "recovery" media with the system.

**Warranty**

See Terms and Conditions and others as defined herein.

**Scope of Maintenance During Warranty**

Hardware: During the Warranty Period, the Contractor will render maintenance to keep hardware in, or restore hardware to, good working order, as provided by the Warranty provisions of the attached Terms and Conditions

System Software: The Contractor warrants that all hardware proposed will run the latest versions of the Microsoft Operating Systems

**Delivery**

Shipment by the Contractor will be FOB destination. Shipping charges will be included in the discounted price of the units. No additional charges will be allowed. Units will be pre-assembled, with the exception of attaching peripheral devices. All internal cards, modems, etc. will be installed, along with appropriate drivers. Delivery will not exceed 21 days ARO. Contractor will notify the ordering Agency within 5 days if all or part of the order will not meet the delivery requirement. The ordering Authorized User, at its option, may elect to establish a new delivery date, or amend or cancel the order. Emergency/rush delivery requiring special shipping and handling will be at Authorized Users' expense (with prior approval only). Rush delivery that occurs as a result of the Contractor's error will be free of charge

**Return of System**

If a system is returned to a Contractor for failure of performance, the Contractor will, at the Commonwealth's discretion, refund all amounts paid to the Contractor for such system or replace the system, and the following will apply:

- Within twenty (20) days of written notification by the using Authorized User, the Contractor will make arrangements for the return of the system.
- All shipping and insurance costs will be borne by the Contractor.
- Contractor will be liable for damages to the system, unless caused by fault or negligence of the Agency that occur during the return process.
- If the system is returned to the Contractor for any other reason, then the Agency will be responsible for all costs associated with the preparation of the system for shipping, and for shipping costs to the Contractor's nearest service location.

**Literature**

A copy of general specification sheets or literature for the models proposed will be included in the Offeror's submission. Detailed technical manuals are not required.

**UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES:** The following reports will be submitted, using the same format as Appendix J:

Periodic Progress Reports/Invoices: The Contractor will provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information will be provided separately for small businesses, women-owned businesses and minority-owned businesses.

Final Actual Involvement Report: The Contractor will submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of this contract. At a minimum, this report will include for each firm contracted with and for each such business class (i.e., small, women-owned, minority-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value.

## **IV. INSTRUCTIONS FOR MATERIALS TO BE RETURNED**

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### **A. General Instructions**

Please provide detailed information about your company and your ability and plans to meet the needs of Authorized Users. Completely answer all parts of the RFP that correspond to your ability to service the Computer Hardware needs you are offering to provide in the proposal. Authorized Users encourage creative and alternative approaches to the offers requested in this RFP, but only in addition to requested materials and approaches.

We strongly encourage that offerors reference the first tab in the RFP excel workbook titled “General Information and Guidelines”. It highlights key parts of the RFP pricing and evaluation grids by appendix.

### **B. Response Format**

You are required to submit your response to the structured questions in this RFP using MS Excel spreadsheets contained in a separate attachment, on Appendices A through J.

Review the following sections carefully in conjunction with the demand profile in Section III:

- Appendix A – Qualitative Supplier Information
- Appendix B – Projected Computer Hardware Demand Profile
- Appendix C – Personal Computer (Desktop Pricing)
- Appendix D – Notebook Computer Pricing
- Appendix E – PC-Server Pricing
- Appendix F – Off-Spec Pricing
- Appendix G – Discounts
- Appendix H – Service and Quality Assurance
- Appendix I – Ability to Meet eVA Requirements
- Appendix J – SWAM

Again, we strongly encourage that offerors read the first tab in RFP excel workbook entitled “General Info and Guidelines” that discusses each Appendix in greater detail.

Here are some additional guidelines:

- Before mailing, write your company name on the label of the diskette/CD
- Do not make any changes to the electronic Excel file formats. Do not add rows or columns, change column headers, or input text in numeric fields. Comments made on the spreadsheets will be ignored.
- When saving the Excel attachment, include your company name in the filename before submitting electronic copies. Print 7 hard copies of each worksheet to accompany your response (1 original and 6 copies).

Submission of incomplete responses may result in your proposal being considered non-responsive. Please do not deviate from the structure established by this RFP. If your company would like to include additional information that would be useful in the evaluation process, you may do so as separate, clearly labeled attachments.

### **C. Pricing Related Forms**

There are 5 pricing-related forms: Appendix C, D, E, F, and G. Enter all information directly into the relevant Excel spreadsheet cells. Enter numbers on each form in “number” (two-place decimal), not “currency” or other format unless otherwise stated. That is, omit dollar signs, commas, and any other non-essential symbols. (e.g., \$7.90 should be entered as 7.90) Prices must be in US Dollars.

Enter “n/a” to indicate not available or “0” if there is no charge. Cells left blank will be interpreted as “no offer”.

Personal Computer (Desktop) Pricing (Appendix C): The Commonwealth is seeking to establish a set of standard configurations for Desktop PCs to be purchased by State Agencies, Institutions of Higher Education and other public bodies. Appendix C provides detailed information on the specifications for these proposed configurations. Offerors are requested to propose a model that would meet or slightly exceed the stated configurations. The pricing methodology is discount-off-list and is explained in more detail in the Appendix and in Section III above. Offerors are requested to submit prices for both Education and State & Local Government. Additionally, offerors are requested to submit pricing for several upgrade/downgrade options and for “off-spec” purchases which do not conform to the standard configurations. Please propose only consistent, enterprise-class machines with stable platforms. Offerors are required to submit a detailed Product Sheet/Specification Sheet for each product offering that is offered. These product sheets should be submitted in hard copy format with the proposal. Alternatively, offerors may opt to send URL’s which provide a link to the product description information. If offeror is a VAR, please select ONE OEM that you will adopt across all configurations for desktops, notebooks and servers.

Notebook Computer Pricing (Appendix D): The Commonwealth is seeking to establish a set of standard configurations for Notebook Computers to be purchased by State Agencies, Institutions of Higher Education and other public bodies. Appendix D provides detailed information on the specifications for these proposed configurations. Offerors are requested to propose a model that would meet or slightly exceed the stated configurations. The pricing methodology is discount-off-list and is explained in more detail in the Appendix and in Section III above. Offerors are requested to submit prices for both Education and State & Local Government. Additionally, offerors are requested to submit pricing for several upgrade/downgrade options and for “off-spec” purchases which do not conform to the standard configurations. Please propose only consistent, enterprise-class machines with stable platforms. Offerors are required to submit a detailed Product Sheet/Specification Sheet for each product offering that is offered. These product sheets should be submitted in hard copy format with the proposal. Alternatively, offerors may opt to send URL’s which provide a link to the product description information. If offeror is a VAR, please select ONE OEM that you will adopt across all configurations for desktops, notebooks and servers.

PC Server Pricing (Appendix E): The Commonwealth is seeking to establish a set of standard configurations for PC Servers to be purchased by State Agencies, Institutions of Higher Education and other public bodies. Appendix E provides detailed information on the specifications for these proposed configurations. Offerors are requested to propose a model that would meet or slightly exceed the stated configurations. The pricing methodology is discount-off-list and is explained in more detail in the Appendix and in Section III above. Offerors are requested to submit prices for both Education and State & Local Government. Additionally, offerors are requested to submit pricing for several upgrade/downgrade options and for “off-spec” purchases which do not conform to the standard configurations. Please propose only consistent, enterprise-class machines with stable platforms. Offerors are required to submit a detailed Product Sheet/Specification Sheet for each product offering that is offered. These product sheets should be submitted in hard copy format with the proposal. Alternatively, offerors may opt to send URL’s which provide a link to the product description information. If offeror is a VAR, please select ONE OEM that you will adopt across all configurations for desktops, notebooks and servers.

#### Off-Spec Pricing (Appendix F)

In some instances, users will require a product that is substantially different than any of the base configurations that were defined. For this reason, offerors are requested to submit a “blanket” discount for these scenarios in this Appendix.

#### Discounts (Appendix G)

State any additional discount that can be offered for early payment by the Commonwealth.

## D. Offeror Questionnaire Forms

There are 4 non pricing-related offeror questionnaire forms: Appendices A, H, I and J. Enter all information directly into the relevant Excel spreadsheet cells. Please fill out these questionnaires in full.

Appendix A: Qualitative Info. Please complete the 38-question survey. It includes questions on offeror history, capabilities, large accounts, reporting and infrastructure.

Appendix H: Service and Quality Assurance. Provide the opportunity to clearly state any further services not covered in the RFP, as well as any portions of the entire RFP package that the offerors cannot comply with in full, **including the Terms and Conditions found in Section V.**

Appendix I: Ability to meet eVA requirements. Please detail your capability to meet Virginia's requirement to do business with Virginia via eVA.

Appendix J: SWAM. Please complete the form detailing your SWAM business participation, as applicable to your firm, as follows: (1) Participation by Small Businesses; (2) Participation By Businesses Owned by Women; and (3) Participation by Businesses Owned by Minorities.

DEFINITIONS for SWAM: The following definitions will be used in completing Appendix J - SWAM:

Period is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

Firm Name, Address and Phone Number is the name, address and business phone number of the small business, women-owned business or minority-owned business with which the Offeror has contracted or done business over the specified period or plans to involve on this contract, as applicable.

Contact Person is the name of the individual in the specified small business, women-owned business or minority owned business that would have knowledge of the specified contracting and would be able to validate the information provided in this list.

Type of Goods or Services is the specific goods or services the Offeror has contracted for from the specified small, women-owned or minority-owned business over the specified period of time or plans to use in the performance of this contract, as applicable. The Offeror will asterisk (\*) those goods and services that are in the Offeror's primary business or industry.

Dollar Amount is the total dollar amount (in thousands of dollars) the Offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this contract, as applicable.

% Total Company Expenditures for Goods and Services is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the Offeror over the specified period for goods and services.

% of Total Contract is calculated by dividing the estimated dollars planned for the indicated firm on this contract by the total Offeror estimated price of this contract.



**E. Deadline for Submitting Proposal**

Your proposal submission should include:

- A Request for Proposal Response Form (RFP p.4) signed by an officer of your company (in blue ink) who has the authority to bind the contents of the proposal (hard copy and diskette/CD via mail)
- 7 hard copy print outs (1 original marked "Original" and 6 copies) and two electronic copies on two diskettes/CDs of your proposal including the Excel spreadsheets, sample reports, and brochure/catalog cuts if offered.

We encourage offerors to utilize the provided Check List on page 13 of the RFP to review the different portions of your proposal package.

You are required to complete and submit your full response by **4:00pm EDT Monday April 28, 2003.**

**Provide proposals in sealed envelopes with the offeror's name and address, and the RFP number and title, on the outside of the envelope. Proposals must be received on or before the deadline.**

Commonwealth of Virginia  
Department of Information Technology  
Acquisition Services Division  
Attention: Doug Crenshaw  
110 South 7<sup>th</sup> Street – Lobby Floor  
Richmond, VA 23219

Proposals not received by this date and time will not be accepted.

## **V. GENERAL TERMS AND CONDITONS**

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### **1. SCOPE OF CONTRACT**

The following paragraphs contain the statewide Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "DIT" (Department of Information Technology), will acquire Personal Computers (Desktops), Notebooks, PC Servers, Services, and Software (Software/Firmware) from the Contractor hereinafter referred to as "the Contractor."

### **2. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals."

### **3. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract will be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto will be brought in the courts of the Commonwealth. The Contractor will comply with all applicable federal, state and local laws, rules and regulations.

### **4. ANTI-DISCRIMINATION**

By submitting their offers, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization will not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and will be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds will be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **5. ETHICS IN PUBLIC CONTRACTING**

By submitting their offers, offerors certify that their offers are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

## **6. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their offers, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

## **7. DEBARMENT STATUS**

By submitting their offers, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

**8. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

**9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**

Failure to submit an offer on the official state form provided for that purpose will be a cause for rejection of the offer. Modification of or additions to any portion of the Request for Proposal may be cause for rejection of the offer; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a offer as non-responsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the offeror withdraw or modify non-responsive portions of a offer which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract will be effective unless reduced to writing and signed by the parties.

**10. CLARIFICATION OF TERMS**

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer no later than April 17th. Any revisions to the solicitation will be made only by addendum issued by the buyer.

**11. PAYMENT****a. To Prime Contractor:**

- 1) Invoices for items ordered, delivered and accepted will be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices will show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This will not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, will be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following will be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth will promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

**b. To Subcontractors:**

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

**12. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror will furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

**13. COMMENCEMENT OF ACCEPTANCE TESTING**

The Commonwealth may "Acceptance Test" the equipment within thirty (30) days of delivery. The "Acceptance Test" may consist of forty-eight (48) consecutive business hours in conformance with the Contractor's technical specifications and functional descriptions as delineated in Paragraph 42 herein. All "Acceptance Test" failures may be reported to Contractor for return. Any failures not specifically identified to the Contractor within thirty (30) days will be considered to have successfully passed the Acceptance Test.

**14. REQUIRED PERFORMANCE LEVEL**

To qualify for acceptance, all Equipment must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, calculated over a period of forty-eight (48) consecutive business hours. The Commonwealth will not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Equipment does not meet the standard of performance during the initial forty-eight (48) consecutive business hours, then, at the Commonwealth's sole discretion, the acceptance period will continue on a day-to-day basis until all Equipment concurrently meet the standard of performance for forty-eight (48) consecutive business hours.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay will not exceed thirty (30) consecutive days from the date of receipt of Equipment.

**15. ACCEPTANCE**

The Equipment will be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth will provide written confirmation of acceptance. If the standard of performance has not been met after thirty (30) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

**16. ASSIGNMENT OF CONTRACT**

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement will not be assignable, in whole or in part, to any other party without the

Commonwealth's written consent, and that any purported assignment or transfer without such consent will be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment will be as follows. The Contractor will give the purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice will be on the Department of Information Technology's (DIT's) "Assignment Notice / Payment Instruction" form and will provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee will notify the using agency or agencies receiving the goods or services of the assignment and will supply the using agency with a copy of the properly executed form. Any payments made prior to the using agency's receipt of such notification and form will not be covered by this assignment.

In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights will not be due until at least thirty days after the Commonwealth's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of DIT will promptly notify the Contractor of any assignment notice it receives.

## **17. MODIFICATIONS**

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. The representatives noted below may only make such modifications. No modifications to this Contract will be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) of \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

Commonwealth of Virginia:  
Contracts Manager, DIT

Contractor:  
TBD After Award Notice

## **18. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract will usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

**19. USE OF BRAND NAMES**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted. The offeror is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified.

**20. TRANSPORTATION AND PACKAGING**

By submitting their offer, all offerors certify and warrant that the price offered for F.O.B. destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers will be used. All shipping containers will be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

**21. INSURANCE**

By signing and submitting a proposal under this solicitation, the offeror or offeror certifies that if awarded the Contract, it will have the following insurance coverage at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverage during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

**22. ANNOUNCEMENT OF AWARD**



Upon the award or the announcement of the decision to award a contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of ten (10) days. Additionally, a public posting of the award will be available on the eVA webpage at <http://awards.dgs.state.va.us/Award-View.asp>.

### **23. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

### **24. NONDISCRIMINATION OF CONTRACTORS**

An offeror, or Contractor will not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body will offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

### **25. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth will participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

#### **eVA BUSINESS-TO-GOVERNMENT CONTRACTS**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth will participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

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b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog will conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us).

## **26. BREACH**

The Contractor will be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor will not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for de-installation and return of Products will be borne by the Contractor. In no event will any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

## **27. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

Any commitment made by the Contractor within the scope of this Contract will be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

a. Prices and options committed to remain in force over a specified period(s) of time;

- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

## **28. DELIVERY DATE**

The Contractor will deliver the Products, and Software ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement, or within twenty-one (21) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date will not be postponed more than a total of thirty (30) days.

## **29. RISK OF LOSS OR DAMAGE**

The Contractor will have the risk of loss or damage to all equipment until clear and unrestricted title to such equipment is transferred to the Commonwealth.

## **30. PRIME CONTRACTOR SPONSORED PRODUCT PROMOTIONS**

The Prime Contractor, at his/her discretion, is allowed to sponsor product / Service promotions during the Contract term or any extensions thereof under the following conditions:

- 1) Prime Contractor is required to provide in writing to DIT, at least 5 days prior to the promotion, the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; the acceptable writing may be e-mail, or correspondence via USPS or other, and
- 2) Prime Contractor is required to identify in writing, the exact products / services covered in the promotion, and
- 3) Prime Contractor is required to identify in writing, the pricing during the promotion or the percentage discount, and
- 4) All Prime Contractor Sponsored Product / Service Promotions are required to be available to all Authorized Users of the Contract, should the Prime Contractor request a promotion that would be limiting, either through product configuration or quantities of products, the Commonwealth at its discretion, will not provide a written agreement. Both parties agree that promotions will not target any one Authorized User, or a few Authorized Users, and
- 5) All Prime Contractor sponsored Product / Service Promotions will be mutually agreed to in writing, and Prime Contractor will be in breach of the Agreement in the absence of a writing from both parties; the writing may be e-mail or correspondence via USPS or other, and

- 6) In any instance of conflict between this clause, "Prime Contractor Sponsored Product / Service Promotions" and the Agreement, this clause will take precedence. And
- 7) In any event wherein the Prime Contractor proposes prices that are different than the Contract prices to any Authorized User, without first obtaining mutual agreement in the format as identified herein, the Prime Contractor will be in breach of the Agreement and the Commonwealth will have all remedies available under Contract and law. And
- 8) The Commonwealth, at its discretion, may assist in advertising the promotion. This assistance will consist of advertising space on its (Commonwealth's) various web sites, or other assistance at its (Commonwealth's) discretion.

### **31. EQUIPMENT CONDITION**

All Equipment to be supplied by Contractor will be new Equipment

### **32. AVAILABILITY OF EQUIPMENT AND SOFTWARE**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

### **33. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, will defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor will indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency will notify the Contractor of such suit within a reasonable time after learning of it and will give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor will not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide non-infringing

substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

#### **34. NON-APPROPRIATION**

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

#### **35. HEADINGS NOT CONTROLLING**

Headings used in this Contract are for reference purposes only and will not be considered to be a substantive part of this Contract.

#### **36. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "software" and "software product" will include all related materials and documentation, whether in machine-readable or printed form.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal if any, if submitted in response to a Request For Proposal ("RFP"); and (4) the Commonwealth's RFP, if any. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it will be severed, and the validity of the remaining terms and conditions will not be affected.

Nothing in this Agreement will be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

### **37. TITLE TO EQUIPMENT**

Clear and unrestricted title to all equipment purchased under this Agreement will pass to the Commonwealth upon payment of the purchase price.

### **38. PRICE PROTECTION/ADJUSTMENTS**

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change will be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

### **39. TERM**

This Agreement will take effect on the date of its final execution by both parties, and will continue in full force for two (2) years, "initial Term". The Commonwealth at its sole discretion may extend this Agreement for three (3) additional one (1) year periods. The Commonwealth will issue a written notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

### **40. INVENTIONS AND COPYRIGHTS**

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

### **41. CONTRACTUAL RECORDS**

All Contractual books, records and other documents related to matters under this Contract will be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

### **42. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from

loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

#### **43. SITE PREPARATION**

a. Equipment environmental specifications, if required, for the equipment to be delivered under this Contract will be furnished in writing by the Contractor upon award. These specifications will be in such detail to ensure that the equipment to be installed will operate efficiently from the point of view of environment.

b. The State will prepare the site at its own expense and in accordance with the equipment environmental specifications provided by the Contractor.

#### **44. SUPPLIES**

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State will conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

#### **45. TERMINATION FOR CONVENIENCE**

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth will be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth will not be obligated for any other costs in the event of Termination for Convenience.

#### **46. FAILURE TO DELIVER**

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event will State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.



**47. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, will be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Tendency of claims will not delay payment of amounts agreed due in the final payment. The purchasing agency will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency will be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, Contractor's remedies will be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event will Contractor's remedies include the right to terminate any license or support services hereunder..

**48. CREDITS**

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

**49. TITLE (SOFTWARE/FIRMWARE)**

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware

product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

#### **50. TERM OF LICENSE**

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and will commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event will Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

#### **51. CONTRACTOR'S WARRANTY POINT-OF-CONTACT**

The Contractor will provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

#### **52. WARRANTY AGAINST SHUTDOWN DEVICES**

Contractor warrants that the Products provided under this Agreement will not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors will insert any such device after execution of this Agreement.

#### **53. PERIODIC PROGRESS REPORTS/INVOICES**

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and business owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information will be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

#### **54. FINAL ACTUAL INVOLVEMENT REPORT**

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned

by women and minorities during the performance of the Contract. At a minimum, this report will include for each firm Contracted with and for each business class (i.e. small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value.

## **55. BUY OUTS – THIRD PARTY ACQUISITION**

Contractor will promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services will not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement will not be released by such acquisition. In addition, prior to any acquisition, Contractor will obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement will constitute a breach of this Agreement for which the successor or assignee and the original Contractor will be liable and subject to debarment.

## **56. ORDERS**

Authorized Users of this Contract may order Products and Software from this Contract by one of the following Order methods:

- A. Purchase Order: An official Purchase Order form issued by an Authorized User.
- B. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT.
- C. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor will accept any and all orders issued through eVA.

**D. Charge/Credit Card:**

- 1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
- 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products/Software available under this Agreement. Under no circumstances will any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

**57. INVOICING**

The Contractor will remit each invoice to the ordering entity, or Authorized User. The Contractor will issue invoices, identifying at a minimum, the components listed below.

- a. manufacturer's product number
- b. product description
- c. price per unit
- d. quantities of merchandise
- e. extended price
- f. date ordered
- g. date delivered
- h. listing of returns

**58. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

Notwithstanding anything to the contrary in this Agreement, the Commonwealth will have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;

- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth will have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction will be for the sole use of the Commonwealth and will be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein will be construed to restrict or limit the Commonwealth's rights to use any technical data that the Commonwealth may already possess or acquire under proper authorization from other sources.

## **59. MAINTENANCE RENEWAL**

Maintenance under this agreement will be renewed at the option of the State. The State will issue a written notification to the Contractor for each twelve (12) month period that maintenance services are required after the initial three (3) year warranty/maintenance period.

## **60. COMPLIANCE WITH FEDERAL LOBBYING ACT**

a. Contractor will not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time there under (together, the "Lobbying Act"), and will promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances will any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor will sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor will have the certification signed by a representative with knowledge of the facts and will fulfill the promises of undertakings set forth in the certification.

## **61. CONTRACTOR'S REPORT OF SALES**

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The

dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor will provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor will define "sale" prior to the first reporting period and then will maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

## **62. INDUSTRIAL FUNDING ADJUSTMENT**

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor will remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment will be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it will constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

## **63. NONVISUAL ACCESS TO TECHNOLOGY:**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth

(the "Technology") will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- (ii) The Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph will be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **64. AMENDMENT AND WAIVER**

No amendment of this Agreement will be effective unless it is in writing and signed by a duly authorized representative of each party. Under no circumstance will any term or condition on or in any invoice, package, license or other Contractor-supplied document be effective unless signed by the Commonwealth's duly authorized representative. No representative of the Commonwealth has authority to increase the price of a fixed-price contract by more than twenty-five percent of the contract price or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee.

No waiver of, or consent to, any breach will be effective unless expressly made in writing and signed by the waiving or consenting party's duly authorized representative.

**65. CONTINGENT FEE WARRANTY**

The Contractor represents and warrants that the Contractor has not employed or retained any company or person, except Contractor's regular, full-time employees, for the purpose of soliciting or securing this Agreement and has not given or agreed to give anything of value to any such company or person contingent upon the award or making of this Agreement. If either or both of the foregoing representations is untrue, the Commonwealth will have the right to terminate this Agreement without liability or, in its discretion, recover from the Contractor the full amount of any such contingent compensation.

**66. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor will act as prime contractor for the procurement and maintenance of the entire proposed configuration and will be the sole point of contact with regard to all obligations under this Agreement.
- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's Product or services, and that such other party has agreed in writing that it has no objection thereto.

**67. THIRD PARTY BILLING**

All goods or services provided under this Contract, that are to be paid for with public funds, will be billed by the Contractor at the contract price, regardless of which public agency is being billed.

**68. OPERATIONAL RESTRICTIONS**

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where the Commonwealth supervises such use.

**69. TYPE CONTRACT**

This is an Indefinite Delivery, Indefinite Quantity requirements Master Contract.

**70. INSPECTION/LATENT DEFECTS**



All Equipment is subject to inspection and test. Equipment that does not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when goods are used after acceptance has occurred. If latent defects are found at any time during the term of this Agreement, the Contractor will repair or replace the defective goods. This remedy will be in addition to any other remedies or obligations under this Agreement or provided by law.

## **71. DELIVERY DATE**

The Contractor will deliver the Equipment, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Equipment is not completed within thirty (30) days after receipt of order by the vendor, the Commonwealth may, at their sole discretion, cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date will not be postponed more than a total of thirty (30) days.

## **72. RECORDS**

The Commonwealth will maintain appropriate daily records documenting performance during the acceptance period and such records will be conclusive for purposes of determining acceptance.

## **73. WARRANTY**

In this Agreement "Warranty" of Equipment will mean: (1) all labor, parts and travel necessary to keep the Equipment in good operating condition and preserve its operating efficiency in accordance with its technical specifications; and (2) Any necessary shipment and insurance costs; and (3) Any Software and Firmware maintenance costs.

Warranty of Equipment will not include electrical work external to the Equipment, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this Agreement. Warranty of Equipment also will not include repair of damage resulting from transportation by the Commonwealth between Commonwealth sites or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

The Warranty prices listed in this Agreement include all Software and Firmware maintenance costs and Equipment costs of labor, parts, travel, factory overhaul, rehabilitation, transportation and substitute Equipment as necessary. If it is necessary to remove any Equipment from a Commonwealth location where On-site warranty is specified, the Contractor will provide substitute Equipment at the time of removal. Substitute Equipment will be comparable to the Equipment removed. In instances where it is necessary for the Contractor to return the Equipment to the factory, the Contractor will be responsible for all costs of the Equipment from the time it leaves the Commonwealth site until it is returned to the Commonwealth site in good operating condition. Only new standard parts or

parts equal in performance to new parts will be used in effecting repairs. Parts that have been replaced will become the property of the Contractor. Replacement parts installed will become the property of the Commonwealth.

All desktops, notebooks, and servers delivered under this Agreement will include a three (3) year On-site Warranty that commences after Equipment Acceptance, except as otherwise agreed upon as apart of an upgrade option or downgrade option on the original purchase of the product.

**ALL SOFTWARE AND FIRMWARE WILL BE CONSIDERED AN INTEGRAL COMPONENT OF THE EQUIPMENT AND THE CONTRACTOR WILL RESPOND TO ALL REQUESTS FOR WARRANTY SERVICE FOR ANY FAILURE.**

#### **74. COMMONWEALTH'S RESPONSIBILITIES DURING WARRANTY**

- a. During any term of Warranty, Commonwealth personnel will not perform or attempt repairs to the Equipment except as authorized in writing by the Contractor.
- b. The Commonwealth will permit access to the Equipment which is to be maintained, subject to the installation site's security regulations,
- c. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.
- d. The Commonwealth will maintain the site in accordance with the equipment environmental specifications furnished by the Contractor.

#### **75. PRINCIPAL PERIOD OF MAINTENANCE (WARRANTY)**

For standard on-site warranty response, the Principal Period of Maintenance (PPM), for desktops, notebooks and servers will be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding State/Institutions of Education holidays. Warranties with longer PPMs may be purchased. Please note that holidays may vary across individual Institutions of Higher Education.

#### **76. RESPONSE TIME**

During the PPM, the Contractor will respond by telephone within two (2) hours after notification from the Commonwealth of a problem for desktops, notebooks and servers. The Contractor will complete all repairs by the end of the next working day after notification by the Commonwealth of a malfunction. Warranty options with shorter response times may be purchased.

#### **77. EQUIPMENT REPLACEMENT DURING WARRANTY**

If the Equipment provided fails to perform in accordance with technical specifications and functional descriptions contained or referenced in this Agreement and is subject to warranty

response three (3) or more times during any ninety (90) day period, then the Contractor will, upon the Commonwealth's request, replace the Equipment at no cost to the Commonwealth. The replacement Equipment will be delivered no later than fifteen (15) working days after the Commonwealth's request is received by the Contractor.

#### **78. DISPOSITION OF SOFTWARE**

Unless otherwise instructed by the Contractor, the State will erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction will be sent to the Contractor as soon as this process is completed. The Commonwealth will have the right to retain one copy for archival purposes.

#### **79. EXCLUSIVITY OF TERMS AND CONDITIONS**

The Department of Information Technology (DIT) will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, DIT, will have no validity and the attached Terms and Conditions will supersede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submitting a bid.

**ATTACHMENT "A"**  
**TO**  
**RFP # 2003-40**  
**FOR THE VIRGINIA DEPARTMENT OF \_\_\_\_\_**

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. **No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.**
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned will complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_